STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:	)	
	)	Docket: 04-IEP-1D
Preparation of the 2005	)	
Integrated Energy Policy Report	)	

POST-HEARING BRIEF OF ENERGY COMMISSION STAFF ON IOU APPEALS OF THE EXECUTIVE DIRECTOR'S NOTICE OF INTENT TO RELEASE AGGREGATED DATA

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Introduction

Pursuant to the Order of California Energy Commission (Energy Commission) Chairman Joseph Desmond, issued August 29, 2005, Energy Commission staff (staff) hereby submits it post-hearing brief on the Investor-owned Utility (IOU) Appeals of the Executive Director's Notice of Intent to Release Aggregated Data. In this brief, staff demonstrates that the evidentiary record established at the August 24, 2005 Business Meeting supports the staff position that release of the aggregated data will not affect any economic advantage held by any electricity market participant, and may provide a long-term increase in market efficiency by reducing uncertainty and leveling the playing field for smaller, less-sophisticated market players. In fact, a review of the record clearly shows that the claims of harm made by the IOUs are based on evidence that is neither applicable to the data identified in the Notice of Intent nor to the electricity market in which the IOUs are currently procuring resources to meet future long-term needs. Staff supports release of the aggregated data to inform a public and transparent decisionmaking process and to send appropriate market signals about the long-term supply/demand balance trends in the State.

Procedural History

On January 19, 2005 and March 2, 2005, the Energy Commission adopted Forms and Instructions specifying what data on electricity resources and bulk transmission certain load-serving entities (LSEs) must provide for the Commission to meet its statutory mandate to prepare the 2005 Integrated Energy Policy Report (2005 IEPR). (Pub. Resources Code § 25302.) Some of the data was due on March 1; the remainder was due on April 1, 2005. Each of the three IOUs – San Diego Gas and Electric Company (SDG&E), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E) – filed the requested data. Each of the utilities requested confidentiality for virtually the entire filings, although the three IOUs requested different periods of confidentiality.[1] Pursuant to the Commission's regulations (Cal. Code Regs., tit. 20, § 2505), the applications were reviewed by the Executive Director, who granted the majority of the requests for confidentiality, although the period of confidentiality was generally shorter than requested. The IOUs did not appeal the Executive Director's determinations.

On June 3, 2005, the Executive Director issued a Notice of Intent to Release Aggregated Data (NOI). The proposal was made pursuant to Title 20, California Code of Regulations, section 2507(d), which allows the Executive Director to release confidential records "if the information has been masked or aggregated to the point necessary to protect confidentiality." The proposal was designed to protect the confidential elements of the resource plan filings, while providing sufficient information to allow those entities not entitled to review the confidential data to nonetheless participate in the development of the Energy Commission's 2005 IEPR report. The NOI identified ten different aggregation tables (aggregation tables), and stated that appeals of the aggregation proposal could be filed no later than June 17, 2005. The three IOUs filed separate appeals.

Pursuant to Commission Order, Commission staff and the three IOUs filed testimony on July 8; the same entities and the Independent Energy Producers (IEP) filed rebuttal testimony on August 12. A hearing was held at the Commission's regularly scheduled Business Meeting on August 24. At the hearing, Energy Commission Chairman Joseph Desmond stated that all participants could file post-hearing briefs no later than August

[1] Only one of the publicly-owned utilities asked for confidentiality, and four of the five energy service providers (ESPs) asked for confidentiality. None of these entities opposed release of the aggregated data.

31, 2005; this date was subsequently changed to September 1 due to the unavailability of the evidentiary hearing transcript.

Argument

I. RELEASE OF THE AGGREGATION TABLES WILL NOT CAUSE THE IOUS TO LOSE AN ECONOMIC ADVANTAGE OR ALLOW OTHERS TO GAIN AN ECONOMIC ADVANTAGE

A. The NOI Would Identify Long-Term Trends in Supply/Demand Balance, Not Specific Procurement Targets.

The IOUs have claimed that some of the aggregation tables that would be released as a result of the Executive Director's NOI reveal trade secrets in that they "gain value from being kept confidential."[2] (SCE Appeal, June 17, 2005, p. 4.) The heart of the IOUs' claims is that the aggregation tables reveal "RNS" or residual net short. The IOUs state that anything revealing RNS must be protected. (SDG&E Direct Testimony, p. 3.) They define RNS as the gap between supply and demand. (*Ibid*.) However, at the same time, they have not opposed the release of information showing, for example, the gap between annual energy and annual energy supplies on a bundled customer basis. In fact, three of the eight aggregation tables were not appealed by any of the IOUs. This demonstrates that to thoroughly address the IOUs appeals, the definition of what it is that the IOUs want protected -- the "gap" or the "RNS" -- must be more precise.

Staff believes that what is entitled to protection is *not* any gap between supply and demand. Rather, it is the gap that exists when demand is inelastic and when supply options are limited; in other words, when the IOUs have few options for meeting customer demand. It is under those conditions that competition is limited and suppliers could gain economic advantage from knowing the IOUs' specific needs. However, the evidence presented in this proceeding demonstrates that the gaps identified in the aggregation tables under appeal do not meet that definition. Rather, the gaps identified in

[2] Each IOU appeal is different: all three appealed both bundled customer annual capacity and quarterly capacity, and none appealed bundled customer annual energy, or planning area annual capacity and annual energy. However, bundled customer quarterly energy was appealed only by SCE and PG&E, planning area quarterly capacity was appealed only by SDG&E and PGE, and only PG&E appealed planning area quarterly energy.

the aggregation tables are an indication of long-term trends in the supply-demand balance. They do not, as PG&E alleges, give suppliers "an unfair advantage in pricing the last increment needed" (PG&E Testimony of Roy Kuga, p. 2.), precisely because they do not tell any market participant *any* specific increment of need at *any* specific time.

Staff testimony clearly explained that the numbers identified in the aggregation tables are input into a comprehensive planning and procurement proceeding that is conducted by the Energy Commission and the California Public Utilities Commission (CPUC). (Staff Testimony of Dr. Michael R. Jaske, p. 3.) As staff witness Jaske pointed out, the purpose of using the data in the planning process is to determine what range of options should be considered for addressing long-term supply/demand balance trends. (*Ibid*.) For example, the Energy Commission and the CPUC may decide that a portion of future demand should be met by demand response or energy efficiency programs. They may decide that peaking resource additions are more important than baseload resource additions over the forecast period. The actual procurement targets will be identified only as a result of this regulatory process. (8/24/05, Reporter's Transcript [RT], p. 203-204.)

In addition, the actual procurement target will change as demand forecasts are updated and as the IOUs' supply situation changes over time. (*Id*.) Witnesses for each of the IOUs conceded that the actual procurement targets would likely be modified over time. (8/24/05, RT, p. 58, p. 142, p. 157.) Moreover, these changes increase in magnitude as time passes. Thus, the aggregation tables do not identify the actual future targets to which the IOUs procure.

Finally, the Executive Director proposal does not allow the release of data for the first three years of the forecast period. In that way, near-term information, which will not be subject to as much change as long-term information, is protected. In addition, to the extent that the state currently suffers from capacity or energy shortages, the three-year window allows for the entry of new suppliers and increased competition for meeting utility demand. In sum, the aggregations that would be released do not identify a precise target to which the IOUs will need to procure; rather, they present projections about long-term trends in the supply/demand balance for the IOUs.

B. IOUs Have Considerable Flexibility in Meeting Long-Term Demand Needs.

Another key factor in determining the effect of releasing the aggregation tables is that the IOUs have considerable flexibility in meeting their long-term needs. Staff's witness Frayer testified that this ability to meet demand over time and through a variety of options means that the IOUs' demand curve for long-term energy and capacity is very elastic. (8/24/05 RT, p. 207.) Staff agrees that when the IOUs have limited options for meeting customer demand needs, there is a possibility of market manipulation by one or more suppliers that should be protected against. However, when the IOUs have multiple options for meeting demand, both in terms of time (they do not need to procure immediately) and in terms of resources (they can utilize different supply side or demand side options), the opportunity for manipulation by any single supplier or group of suppliers diminishes dramatically.

The IOUs can procure through a variety of mechanisms. (Staff Testimony of Dr. Michael R. Jaske, p. 8.) Currently, the primary means of procurement is the RFO process. (SDG&E Rebuttal Testimony, p. 2.) The evidence shows that the IOUs have already issued a variety of Requests for Offers (RFOs) for a variety of electricity products. (Staff Rebuttal Testimony, August 12, 2005, Attachment B, p. 3.) Contracts entered into as a result of the RFO process can be long-term, mid-term, or short-term. (*Ibid*.) In addition to RFOs, the IOUs can build their own generation resources. (Staff Rebuttal Testimony, Attachment A, p.14.) They can also implement additional demand side programs to encourage energy efficiency and demand response, or employ distributed generation. (Staff Testimony of Dr. Michael R. Jaske, p. 8.)

Another important element of IOU flexibility in meeting long-term demand needs is the time needed to meet those needs. Because the staff is not proposing to release information about 2006 – 2009, the IOUs are not "under the gun" to obtain resources to meet the long-term demand trends identified in the aggregations. They can issue multiple RFOs over time. They can seek resources from new market entrants; in fact it is precisely this ability to attract new market participants that creates the long-term benefits associated with release of this data as discussed below. And it is the ability to say "no" to specific options that means that market participants will not be able to exercise the type of market power that the IOUs fear from release of the aggregation tables.

In sum, the flexibility the IOUs have with timing and resource options to meet their long-term energy and capacity needs guards against suppliers using information about long-term trends to exercise an unfair bargaining advantage in negotiating with the IOUs to meet those needs. The aggregation tables, in identifying long-term demand trends, will not necessarily lead to higher prices for ratepayers, given the variety of options the IOUs have to respond to ratepayer needs.

C. Other Utilities Release Long-Term Planning Data.

Evidence that releasing planning data does not cause harm can be seen by the fact that similarly–situated utilities that buy and sell in the same market as the IOUs routinely release this data. For example, twelve of the thirteen California municipal-owned utilities didn't even apply for confidentiality for the underlying resource plan data. And, the one municipal utility that did request confidentiality did not oppose release of the aggregations. (Staff Testimony of Dr. Michael R. Jaske, p. 4.) These utilities operate in the California market, and if disclosure of long-term planning data allowed suppliers to raise prices, one would certainly not expect to see them voluntarily releasing this data. In addition, other out-of-state utilities that operate in the California market also release long-term planning data. A review of Table 2 in Dr. Jaske's Testimony clearly demonstrates that a number of western utilities routinely disclose as much or more information than would be disclosed in the aggregation tables. (Staff Testimony of Dr. Michael R. Jaske, p. 20.)

In rebuttal testimony, both SCE and PG&E claimed that there are differences between both the California municipal utilities and the other western utilities that render the IOUs more susceptible to harm from release of the aggregation tables. (SCE Rebuttal Testimony, p. 52; 8/24/05 RT, p. 134-135.) However, a review of the factors cited by the IOUs shows that they either do not represent any significant difference or are inapplicable. For example, there is no significant difference in the reliance on hydroelectric generation. In fact, staff's testimony demonstrates that the IOUs' reliance on these types of resources is far less than that of Avista, Portland General Electric, and

Puget Sound Energy. (Staff Rebuttal Testimony, Attachment C, at p. 3.) PG&E's reliance -- the highest amongst the California IOUs – is similar to that of the Sacramento Municipal Utility District, PG&E's neighboring utility. (*Ibid*.) Apparently, these other utilities do not believe that their reliance on hydroelectric resources creates a risk that release of planning data could cause their ratepayers to pay higher prices for electricity.

In addition, these other utilities face similar risks affecting the level of load served. Staff specifically called out NorthWestern as a utility whose entire load is subject to loss from alternative suppliers, but which nonetheless releases short-term and long-term energy and capacity forecasts. Other utilities whose customers have direct access options also provide forecast information similar to that identified in the aggregation tables. (Staff Rebuttal Testimony, Attachment C, p. 3.) Obviously, if the threat of loss of load meant that disclosure of forecast data would cause ratepayer harm, one would not expect to see these utilities disclosing this type of information. However, they do, indicating that release of forecast data will not create the damage feared by the IOUs.

Another argument raised by the IOUs is that they rely more heavily on bilateral contracts than the other utilities that release planning information, thereby making them more vulnerable to the exercise of undue bargaining power in contract negotiations. However, in making this claim, the IOUs included the contracts that the Department of Water Resources entered into on behalf of the California IOUs in 2001 in an effort to reduce the prices the IOUs were being forced to pay for electricity. Staff excluded those contracts in its calculations because the IOUs did not enter into them willingly; they were simply allocated to the IOUs after the fact. In addition, the IOUs will have a variety of options for replacing the energy and capacity provided by those contracts when they expire. Given these facts, staff believes it is appropriate to exclude the DWR contracts when assessing the degree of reliance on bilateral contracts. Under these assumptions, when the California IOUs are compared to the other western utilities that release long-term planning data, there is no appreciable difference in the degree of reliance on bilateral contracts. (Staff Rebuttal Testimony, Attachment C, p. 2.)

Finally, at the August 24, 2005 hearing, PG&E raised for the first time the argument that a significant difference between the California IOUs and the other utilities that release planning data is who controls the marginal resource. (8/24/05 RT, p. 134.) However, as Dr. Jaske pointed out, PG&E's claim that this is a crucial distinction is not born out by the fact that five of the western utilities report whether they have a net deficit or a net surplus of capacity on a monthly basis. This information tells market participants whether the western utilities are buying or selling and thus whether they have control over marginal resources. (*Id*. at p. 200-201.) If knowing whether a utility controlled the marginal resource allowed other market participants to exercise a negotiating advantage, these other western utilities would not be releasing this information. The fact that they do demonstrates that they do not believe such information jeopardizes their bargaining position on either the buy or the sell side.

<u>D. IOU Evidence is Based on Short-Term Needs and Limited Supply Options.</u>

In support of their claims of harm, the IOUs offered the following evidence: 1) statements that current conditions are similar to the energy crisis of 2000 – 2001 and that release of the aggregation tables could cause a repeat of that situation (PG&E Testimony, p. 2; SCE Rebuttal Testimony, p. 17.); 2) testimony about a series of experiments conducted by Dr. Charles Plott evaluating the effect of information release on certain market transactions (SCE Testimony, Appendix 3 [including Exhibit A], SCE Rebuttal Testimony, p. 1-15.); and 3) simplistic analogies to poker games, football huddles, and used car transactions (SCE Testimony, Appendix 4 [quoting Dr. Plott].) However, a careful review of this testimony indicates that it addresses short-term, specific procurement targets met in a market environment of limited options and limited -- if any -- new entry. In contrast, the aggregations would release estimated long-term trend data about needs that can be met in a market in which new entry is possible and in which the IOUs have considerable flexibility in obtaining resources.

1. Conditions Causing The 2000 – 2001 Energy Crisis Are Not Present Today.

Two of the IOU witnesses refer back to the 2000 – 2001 energy crisis in claiming that release of the aggregation tables could increase prices paid by ratepayers for electricity. PG&E's witness Mr. Kuga argues generally that release could create a "version" of the type of market power that caused the crisis. (PG&E Rebuttal Testimony, p. 2.) SCE's witness Dr. Stern (which was sponsored by Mr. Hemphill) provides a more specific comparison, stating both that there are similarities between the two situations and that the differences that exist do not support a conclusion that the energy crisis experience is unlikely to be repeated. In fact, Dr. Stern implies that that there have been few, if any changes since the energy crisis. ("Ms. Frayer draws a wholly inaccurate conclusion about the California markets and their vulnerability to market power and manipulation, despite extensive recent history of just that." [SCE Rebuttal, p. 9.]) However, examination of PG&E's and SCE's testimony demonstrates that their failure to consider the changes that have occurred in procurement environments, market structure, and data disclosure practices since 2000 and 2001, as well as their lack of recognition of the amount of new resources that have come online since 2000 and 2001, make the analogy to the energy crisis of four years ago inapplicable.

In 2000 and 2001, the IOUs were required to purchase virtually all of their energy through short-term markets, and that they were forced to sell the output of their own generating facilities into the same market. (Staff Testimony of Dr. Michael R. Jaske, p. 8.) Electricity prices were dominated by these short-term purchases, and the IOUs effectively had no ability to enter into new long-term contracts. (*Id*.) As a result, when the short-term price of electricity rose, the IOUs were forced to pay the higher prices for virtually all of the electricity needed to serve their loads. Although the written testimony of Dr. Stern states that these differences do not support a conclusion that release of long-term planning data is unlikely to cause a repeat of the 2000 – 20001 energy crisis, both he and the witness sponsoring his testimony failed to explain why he reaches this conclusion. It is obvious to staff that lack of flexibility in procurement options deprived the IOUs of any ability to utilize other market forums and avoid the high price short-term market. Such is not the case today. The IOUs have many demand-side and supply-side alternatives.

Dr. Stern attempts to bolster the analogy by pointing out that the current supplier situation is similar to 2000 and 2001, with a similar number of market participants. Another similarity he points to is the "nearly vertical demand curve." With respect to the first point, staff testified that there are currently many more market participants than in 2000 and 2001, and that, in fact, the Federal Energy Regulatory Commission has determined that the generation market in which the IOUs are procuring is competitive. (Staff Rebuttal Testimony, Attachment A, p. 9; 8/24/05 RT, p. 222.) We therefore do not believe the evidence supports Dr. Stern's assertion. Moreover, both those "similarities" (if they exist at all) evaporate over the time period during which the aggregations would initially be withheld. As discussed above, in the current procurement environment of IOU flexibility for meeting long-term resource needs, demand is, in fact, quite elastic in any given procurement process because of the availability of alternatives. Similarly, new market entry may occur over time, changing the number and type of suppliers.

Finally, it is telling that the SCE witness agreed that the release of long-term planning data did not cause the energy crisis. (8/24/905 RT, p. 89.) In fact, no long-term planning data was released at all during that time period. (Staff Testimony of Dr. Michael R. Jaske, p. 8.) There is no evidence that release of the aggregation tables into the current procurement environment will cause a repeat of the energy crisis. As the testimony discussed below demonstrates, if the focus of the Commission's concern is avoiding unnecessarily high prices, it should take affirmative steps to ensure that it is encouraging -- not preventing -- the dissemination of information that will send long-term market signals for new investment and motivate increased competition.

2. Dr. Plott's Experiments Do Not Reflect Current California Market Conditions.

SCE's witness Dr. Plott submitted the results of several series of experiments in which he monitored the prices charged for a commodity while changing the amount of information made available to the market participants. In his declaration accompanying SCE's July 8, 2005 testimony, he stated, "while the amount of the price impact [from suppliers knowing the amount of capacity that the IOUs plan to purchase] will vary according to the circumstances, the general competitive consequence is in only one direction – price increases." (SCE Testimony, Appendix 3, p. 2.) However, after conducting a series of experiments using a different transaction mechanism (an auction rather than a bilateral pairwise negotiation) and different set of supply and demand conditions, Dr. Plott concluded that whether prices increase or decrease upon disclosure of buyer demand depends upon the size of the demand identified vis-à-vis the pool of competitors. (SCE Rebuttal Testimony, p. 26.) The only conclusion that can be drawn from a comparison of these two statements is that the assumptions about the market used in designing the experiment dramatically affect the results.

In exploring Dr. Plott's experiments further during the hearing, staff asked a series of questions about the assumptions built into both sets of experiments. Perhaps the most relevant assumption for ascertaining the applicability of the results to these appeals is that there is no new market entry. (SCE Testimony, Appendix 3, Exhibit A, p. 2; 8/24/05 RT, p. 68-69.) Given the amount of new market entry that has already occurred since 2001 -- more than 9,000 MW (Staff Rebuttal, Attachment D) -- Dr. Plott's assumption seems to be a significant flaw. Moreover, Dr. Plott testified that aggressiveness of bidding increases with the number of competitors (SCE Rebuttal Testimony of Dr. Plott, p. 39), and that an increase in the number of sellers would reduce the price paid by buyers. (8/29/05, RT, p. 78.) Yet, Dr. Plott's experiments failed to account for new market entry. This is a critical flaw in his study.

In addition, Dr. Plott failed to evaluate the same type of data that would be released in the aggregation tables. For example, he did not evaluate the change in the supply mix over time. (*Id*. at p. 76.) He did not evaluate the release of demand information over time. (*Ibid*.) He did not evaluate the difference between energy and capacity information in his study. (*Ibid*.) These distinctions are fundamental components of the aggregation tables, and Dr. Plott's failure to evaluate them renders the conclusions of his study inapplicable to the question of the effect of their release.

Finally, although Dr. Plott stated that he possesses "special knowledge, skill, experience, training and education necessary to form an opinion on the topic of information disclosure and its effect on the California electricity market (SCE Testimony, Appendix 3, p. 1), Dr. Plott was unable to answer basic questions about the structure of the California electricity market. For example, he did not know whether or how much new entry there has been in California since 2001. (8/24/05 RT, p. 69.) He did not know how many suppliers there are in California capable of selling energy and capacity. (*Id*. at p. 69.) In fact, he apparently has very little knowledge of the market structure and did not even know whether the facts assumed in his study concerning the market structure are true. (*Id*. at p. 81.) He was also unfamiliar with the proposed aggregation tables themselves, and was unable to answer questions about the specific information proposed to be released. (*Id*. at p. 73.)

In sum, it is clear that Dr. Plott's work -- although perhaps of academic interest – does not offer any information about what the effect of release of the aggregation tables would be in reality. His lack of familiarity with the data contained in the aggregations and structure of the current California market disqualify the study as providing any meaningful review of the question the Commission needs to answer in order to decide these appeals.

3. SCE's Simplistic Analogies to Poker Games, Football Huddles, and Used Car Transactions Ignore the Complicated and Dynamic Nature of the California Market.

In both direct and rebuttal testimony, SCE analogizes releasing long-term planning data to showing one's cards in a hand of poker. (SCE Testimony, Appendix 4 [quoting Dr. Plott]; SCE Rebuttal, p. 15-16.) SCE makes similar references to allowing an opposing team into a football huddle or informing a used car salesperson of the amount one is willing to pay. Staff does not believe that SCE, a sophisticated player in the California energy market, truly believes that conducting long-term planning and procurement activities is comparable to playing poker. Nonetheless, because SCE has raised the argument, we address it here.

The California market includes the following suppliers: approximately twenty-eight California utilities, fifteen energy service providers, and many other utilities serving retail load in the West. (Staff Testimony of Dr. Jaske, p. 10.) It also includes more than 50 companies with aggregated installed capacity of 100 MW or more. (Staff Testimony of Ms. Frayer, p. 8.) The IOUs can operate both as buyers and sellers of energy and capacity. In the current market environment, the IOUs have the ability to procure through a variety of RFOs, to construct or purchase their own generation resources, and to implement demand reduction, energy efficiency, or distributed generation programs.

(Staff Testimony of Dr. Michael R. Jaske, p. 8.) It is in this market that the IOUs are selling over time, and procuring over time, to meet both short-term and long-term needs.

In short, the analogies drawn by SCE are misleading and uninformative. They do not capture the complexities of the California market nor the options available to all parties for conducting transactions. Staff encourages the Commission to employ its own knowledge and experience of the California market as it weighs the evidence in this case and to reject the notion that the IOUs' long-term procurement activities are comparable to a football huddle or poker game.

II. RELEASE OF THE AGGREGATION TABLES MAY PROVIDE RATEPAYER BENEFITS BY REDUCING UNCERTAINTY AND LEVELING THE PLAYING FIELD FOR SMALLER MARKET PARTICIPANTS.

In addition to demonstrating that the aggregation tables will not cause higher prices for ratepayers, staff also testified that the aggregation tables may create ratepayer benefits by reducing uncertainty and leveling the playing field between well-informed, sophisticated market participants, and the smaller market participants and less informed potential new entrants. The IOUs devoted much of their rebuttal testimony to challenging this conclusion. However, a careful review of the discussion shows that the IOUs' arguments are based on a misunderstanding about how economic theory applies to the California electricity market.

Staff provided uncontroverted testimony that there is much information publicly available from which market participants can make their own estimate about the IOUs' future supply and demand situation. (Staff Testimony of Ms. Frayer, p. 9.) However, some market participants have more resources than others with which to utilize this existing data to develop sophisticated estimates of long-term supply and demand trends. The market participants with less-sophisticated understanding are less aggressive about competing in RFOs because they know that others are better-informed and may be able to more accurately estimate future supply and demand conditions and are thus better positioned to win the RFO. (8/24/05, RT, p. 213.) However, the aggregation tables can serve as a substitute for this "private" information possessed by only some of the suppliers, allowing the less-sophisticated sellers to compete more aggressively in future procurement processes for energy and capacity. The end result will be more aggressive competition and lower prices for ratepayers.

The IOUs raised several challenges to these conclusions. First, they claim that the staff position ignores the fact that the inverse must be true – if disclosing buyers' needs benefits ratepayers, so should disclosing suppliers' costs. (SCE Rebuttal, p. 4.) A second argument is that the economic theories cited by the staff apply only to release of information about the commodity itself, not the strategy of one of the market participants. (*Id*. at p. 47.) Review of both of these arguments demonstrates that they are based on a mischaracterization of the data being released, misunderstanding of the key properties of energy and capacity and how suppliers develop their valuations of energy and capacity commitments and bids in RFOs, and a misapplication of the theory to the circumstances in question.

The first challenge raised by the IOUs is that staff ignores the ratepayer benefits that would accrue from releasing seller costs. The implication of this argument is that if buyers' needs are disclosed, so should sellers' cost be disclosed. As an aside, we first note that ignoring a potential ratepayer benefit does not mean that the aggregation proposal will cause harm, which is the basis of the IOUs appeals. Thus, the challenge is irrelevant to the question being addressed by the Commission. However, to ensure that there is no misunderstanding about this issue, we address it here.

Staff's testimony demonstrated that in a situation in which a buyer is seeking bids for a product or service, reducing seller uncertainty about the value of the product or service by releasing information that helps resolve uncertainty about common drivers of value for that product or service will motivate more aggressive competition. (8/24/05, RT, p. 214.) However, releasing information about the sellers' costs to the buyer -- the IOU -- does not necessarily affect how the sellers compete with one another, as the sellers will not know what information about other sellers is released. (*Id*. at p. 289.) It does not, for example, change the scope of needed supply, resolve uncertainties about suppliers' costs, give suppliers information about their competitors, or, to the suppliers' knowledge, change the product or service that the buyer is demanding. Therefore, it does not increase competition or otherwise change the scope of competition between suppliers. While we understand that the IOUs believe that it is "unfair" to release information they submitted without also requiring a release of seller information, the fact that both are not equally affected does not mean that release of the aggregation tables will result in harm.[3] And, in fact, as discussed above, the staff testimony demonstrates that release of the aggregation tables will provide a ratepayer benefit by releasing information that would likely result in increased competitiveness of suppliers in future procurement processes.

The IOUs also argue that staff misapplied the theory it used to conclude that ratepayer benefit will be the result of release of the aggregation tables. Specifically, SCE argues that the theory applies to information about the "features of the item for auction. . .", and that the aggregation tables have nothing to do with these features, but rather indicate the strategy of one of the participants (an IOU) in the auction. (SCE Rebuttal at p. 47.) However, SCE's argument is based on the supposition that only the RNS would be released. (*Ibid*.) In fact, as discussed above, the aggregation tables provide valuable information about the supply mix over time, the supply/demand trends over time, and the variability over time between capacity and energy needs. This information is much more analogous to the information release in the oil drainage tract model noted by staff, as it provides public information that allows suppliers to refine their valuations of the product or service that they are committing to sell to the IOUs and thus bid more aggressively in an auction, such as an RFO. In short, long-term planning data does not represent an IOU's strategy, and the IOUs' arguments that its release will cause harm, not benefit, are based on a misapplication of this economic theory to the electricity markets and specifically the auction-like procurement processes which the IOUs currently conduct.

Finally, we note that the ratepayer benefits are important in addressing PG&E's claim that even if the aggregations are not trade secrets, they should still be withheld because "the public interest served by not disclosing the record 'clearly outweighs' the public

[3] For purposes of this discussion, the IOUs apparently assumed that there is little or no public information about sellers' costs. (*See*, 8/24/05 RT at p. 287.) However, staff provided testimony that there is a significant amount of publicly available information on supply costs. (Staff Testimony of Ms. Frayer, p. 9.)

interest served by disclosure of the record." (Gov. Code, § 6255, subd. (a).) PG&E raised this issue at the hearing, and staff recommends that the Commission consider these benefits in addressing the public interest served by disclosure of the records.

IV. INFORMATION ALREADY PUBLICLY AVAILABLE IS MUCH MORE LIKELY TO CAUSE HARM THAN THE SUMMARY AGGREGATED TABLES.

Staff has testified that it agrees with the IOUs that when demand is inelastic and supply is limited, suppliers may be able to obtain higher prices than would be the case under different circumstances. (8/24/05 RT, p. 187-188.) However, by withholding near-term data and only identifying long-term demand/supply balance trends, the aggregation tables would not create that situation and hence would not disclose information that would allow suppliers to obtain those higher prices.

In contrast, there is a significant amount of public information that *does* provide insight about IOU short-term needs and about the value the IOUs may place on certain resource options. In fact, staff provided considerable testimony about these other sources of data. However, it is important to point out that staff is not claiming that this other public data is identical to the aggregation tables and that the aggregation tables are therefore not entitled to confidential protection. As stated before, staff believes that the aggregations are not entitled to confidential protection because they do not provide information that will cause the IOUs to lose an economic advantage or allow others to gain an economic advantage. However, the availability of this other information is significant because it is this data -- not the aggregation tables -- that can be used to structure bids to take advantage of demand inelasticity or limited supply options, especially over the shorter term.

For example, the data identified in the Electronic Quarterly Reports includes the type of product, the quantity of product, and the price and the point of delivery for each transaction covered by an effective contract during the preceding quarter. (Staff Rebuttal Testimony, Attachment E.) It is actual, recent historical data that shows with great precision how the IOUs are procuring energy and capacity through contracts with a variety of counterparties. Several specific examples of types of analyses that can be performed with this data are included in the staff testimony. (*Ibid*.) In addition, staff testified that there is considerable data about both short-term and long-term pricing of various electricity products. (Staff Rebuttal Testimony, Attachment F.) And, in response to PG&E's concern about disclosing the extent of its dependence on seasonal hydroelectric resources, staff filed testimony showing that there is detailed monthly information available about the actual production of PGE&'s hydroelectric facilities. (Staff Rebuttal Testimony, Attachment G.)

The IOUs claim that its long-term forecasts may somehow be more useful to market participants than this historical data in negotiating transactions. However, as staff testified, historical data on the types of products the IOUs have purchased and the prices they have paid for those products is much more likely to reveal the actual value the IOUs place on resource options than the aggregations. (Staff Rebuttal Testimony, p. 7.) This is especially true in the short- term when demand is relatively inelastic and the IOUs may have limited supply options. And, by 2009, the first year for which aggregated data would be released, changes in the demand forecast and ongoing procurement activities mean that the forecasts will not be sufficiently precise to be of much use in developing bid strategies. On the other hand, recent historical actual data *will* be available at that time, allowing market participants to determine the value of resources in real time. In sum, the aggregations of IOU forecast data, while useful for sending long-term market signals, will not identify a specific target that market participants can use to obtain higher prices.

Conclusion

In conclusion, staff believes that release of the aggregation tables identified in the NOI would not cause ratepayer harm and may, in fact, create lower prices for ratepayers. Although staff wholeheartedly supports the objective expressed by the IOUs of protecting ratepayers against excessive prices, we simply do not believe that the evidence supports a conclusion that the aggregation tables will have that effect. Rather, the aggregations will allow members of the public to participate in the public review process, and will send signals to market participants that may result in increased competition in the marketplace.

As a result, there is no justification for withholding the aggregations and staff strongly encourages the Commission to allow their release. Doing so will send an important message that the Commission supports transparency in its decisionmaking and more vigorous competition as a means of sending appropriate market signals about the long-term supply/demand balance trends in the State.

DATED: September 1, 2005 Respectfully submitted,

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4-IEP-1D

Service List: POST-HEARING BRIEF OF ENERGY COMMISSION STAFF ON IOU APPEALS OF THE EXECUTIVE DIRECTOR'S NOTICE OF INTENT TO RELEASE AGGREGATED DATA, DATED SEPTEMBER 1, 2005

Energy Commission
Chairman Joseph Desmond
Vice Chair Jackalyne Pfannenstiel
Commissioner Arthur Rosenfeld
Commissioner Jim Boyd
Commissioner John Geesman
Jonathan Blees
Caryn Holmes
Michael Jaske
Kevin Kennedy

Pacific Gas and Electric Company
Christopher Warner

Southern California Edison Company
Beth Fox
Frank Cooley

San Diego Gas and Electric Company
Lisa Urick

Independent Energy Producers
Brian Cragg